

**STATE OF ARIZONA  
INVESTMENT ADVISER LICENSING  
AND COMPLIANCE GUIDELINES**



**ARIZONA CORPORATION COMMISSION  
SECURITIES DIVISION  
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[www.azcc.gov/divisions/securities](http://www.azcc.gov/divisions/securities)**

**Disclaimer**

This publication is provided as a public service for general informational purposes only, is not intended to be legal advice, and should not be construed as a replacement for competent legal counsel. Although every effort has been made to present the most accurate and current information possible, we cannot and do not warrant that the information in this publication is current and accurate.

A.R.S. §§ 44-3101 through 44-3300 and A.A.C. R14-6-101 through R14-6-212 govern investment adviser and investment adviser representative activity within and from the state of Arizona. You may find statutes and rules on the Securities Division website at [www.azcc.gov/divisions/securities/statutes\\_and\\_rules.asp](http://www.azcc.gov/divisions/securities/statutes_and_rules.asp).

## **LICENSING REQUIREMENTS**

Please note that all investment adviser filings with the state of Arizona are to be submitted electronically through the Investment Adviser Registration Depository ("IARD"). Information on becoming entitled to use the IARD is available at [www.iard.com](http://www.iard.com). You may also contact the IARD for assistance at (240) 386-4848.

### **LICENSING AS A STATE INVESTMENT ADVISER**

Applicants should review the definition of "investment adviser" in A.R.S. § 44-3101 as well as the exemption available under A.R.S. § 44-3152 to see if licensing in Arizona is required.

To become licensed as an investment adviser, an applicant must submit to the Securities Division:

Form ADV (Part 1A and Part 1B) File Form ADV electronically through the IARD after you have become entitled to use the IARD. [A.R.S. § 44-3153(B) and A.A.C. R14-6-212(A)(1)]

Part II of the ADV and Schedule F File Form ADV Part II and Schedule F electronically through the IARD. [A.R.S. § 44-3153(B) and A.A.C. R14-6-212(A)(1)]

Disclosure Statement (Brochure) If Part II of the Form ADV will not be used as your disclosure statement, please submit electronically through the IARD a copy of the disclosure statement (brochure) given to clients. [A.R.S. § 44-3153(C)(1) and A.A.C. R14-6-205 and R14-6-212(A)(5)]

Audited Balance Sheet, if required. May be submitted electronically on ADV Part II Schedule G or filed directly with the Securities Division. [A.R.S. § 44-3153(C)(3) and A.A.C. R14-6-212(A)(2)]

No Investment Adviser Activity Affidavit Available on the Securities Division website at [www.azcc.gov/divisions/securities/forms/forms-ia.asp](http://www.azcc.gov/divisions/securities/forms/forms-ia.asp). [A.R.S. § 44-3153(C)(4) and R14-6-212(A)(3)]

Fingerprint Card, if applicable. Please submit to the Securities Division a fingerprint card (supplied by the Division) and a check for \$24.00 made payable to the Arizona Corporation Commission. [A.R.S. § 44-3153(C)(6)]

Examination Requirement An individual who is a sole proprietor and who does not have an exemption from licensing must provide proof of compliance with written examination requirements. Additional information is available on the Securities Division website at [www.azcc.gov/divisions/securities/licensing\\_and\\_registration/reg-ia.asp](http://www.azcc.gov/divisions/securities/licensing_and_registration/reg-ia.asp). [A.R.S. § 44-3153(C)(2) and A.A.C. R14-6-204]

Licensing Fee A \$250 nonrefundable licensing fee should be sent directly to Financial Industry Regulatory Authority, Inc. ("FINRA") and deposited into your firm's IARD Daily Account, along with any other required state and IARD system fees. [A.R.S. §§ 44-3153(D) and 44-3181(A) and A.A.C. R14-6-212(A)(7)]

## LICENSING AS AN INVESTMENT ADVISER REPRESENTATIVE

Applicants should review the definition of "investment adviser representative" in A.R.S § 44-3101 and A.A.C. R14-6-210 and R14-6-211 to see if licensing in Arizona is required.

To become licensed as an investment adviser representative, an applicant must submit to the Securities Division:

Form U-4 filed electronically through the IARD. [A.R.S. § 44-3156(B) and (C)(1) and A.A.C. R14-6-212(C)(1)]

Fingerprint Card, if applicable. Please submit directly to the Securities Division a fingerprint card (supplied by the Division) and a check for \$24.00 made payable to the Arizona Corporation Commission. [A.R.S. § 44-3156(C)(3)]

Examination Requirement Proof of compliance with written examination requirements. Additional information is available on the Securities Division website at [www.azcc.gov/divisions/securities/licensing\\_and\\_registration/reg-ia.asp](http://www.azcc.gov/divisions/securities/licensing_and_registration/reg-ia.asp). [A.R.S. § 44-3156(C)(2) and A.A.C. R14-6-204]

4. Nonrefundable license fee of \$40 sent directly to FINRA and deposited into your firm's IARD Daily Account. [A.R.S. §44-3181(A) and A.A.C. R14-6-212(C)(3)]

## **REPORTING REQUIREMENTS**

### **INVESTMENT ADVISER**

To retain licensure, an investment adviser whose principal place of business is in the state of Arizona shall comply with the following requirements:

1. Investment advisers shall file all amendments to Form ADV (Parts I, II, and Schedule F) electronically through the IARD as changes occur or within 30 days after the change. [A.R.S. § 44-3159(A)(1)]

2. If the investment adviser has custody of client monies or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 for each client, the investment adviser must file with the Securities Division within 90 days after the investment adviser's fiscal year-end an annual Audited Balance Sheet, including footnotes, together with the independent certified public accountant's report. [A.R.S. § 44-3159 (A)(2)]

**NOTE:** If the investment adviser's principal place of business is in another state, the adviser is registered in that state, and the adviser has complied with the financial reporting requirements of that state, the adviser may comply with A.R.S. § 44-3159(A) by filing with the Securities Division a copy of the financial reports that the investment adviser files with the state in which it maintains its principal place of business. [A.R.S. § 44-3159(D)]

3. If the investment adviser has custody of client monies or securities, the adviser must also comply with A.A.C. R14-6-206.

**NOTE:** "Custody" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. Please review A.A.C. R14-6-101(B)(3) and A.A.C. R14-6-206 for additional information about custody.

## INVESTMENT ADVISER REPRESENTATIVE

File electronically the Form U-4 through the IARD as changes occur or within 30 days after the change. [A.R.S. § 44-3159(A)(1)]

## FEES

In order to submit an application for a new state investment adviser or investment adviser representative license through the IARD system, a firm must have funds on deposit in its Daily Account prior to submitting the filing. If no funds are on deposit, the system will not permit an applicant to submit the filing.

Please review [www.iard.com](http://www.iard.com) or contact IARD at (240) 386-4848 regarding any IARD system fees or submission questions.

## RENEWAL

All licenses expire on December 31 of each year unless renewed before expiration by payment through the IARD of the fees prescribed by A.R.S. § 44-3181(A). If the IARD does not provide for receipt of a filing, the filing may be made with the Corporation Commission by mail or any other reasonable method that is acceptable to the Commission. [A.R.S. § 44-3158(A)].

Investment Adviser .....\$250

Investment Adviser Representative (each) .....\$ 40

**NOTE:** An investment adviser that fails to timely renew an annual investment adviser or investment adviser representative license shall pay a penalty of twenty-five dollars per business day until the appropriate documents and fee are filed, up to a maximum of forty business days. Failure to timely renew is not a violation of A.R.S. § 44-3151 if the license fee and penalty are paid within forty business days. Failure to renew within forty business days may result in additional sanctions as provided under the Investment Management Act. [A.R.S. § 44-3181(B)]

## NAME CHANGE

In the event of a name change, an investment adviser must submit to the Securities Division:

1. The investment adviser's name change under Item 1 of Part 1A of the Form ADV and an amended copy of ADV Part II filed electronically through the IARD; and
2. For each investment adviser representative, the Form U-4 filed electronically through the IARD with the new name of the investment adviser.

## REORGANIZATION

In the event of a reorganization of the investment adviser, the investment adviser must:

1. Complete an application to license the reorganized entity, pursuant to the guidelines above. Fees will be debited from the firm's IARD Daily Account.

**NOTE:** Arizona law does not provide for the transfer of an investment adviser license. In the event that the IARD system does not assess a new license fee upon notice of reorganization, the Adviser must forward the licensing fee directly to the Corporation Commission.

2. File the Form ADV-W for the former entity electronically through the IARD. Please note that in order to terminate the license of the former entity, the former entity must have been transitioned onto the IARD and filed its current Form ADV electronically through the IARD before its Form ADV-W can be filed electronically through the IARD.

3. File a current Form U-4 electronically through the IARD for those representatives who are transferring to the new entity and a Form U-5 for those representatives who are terminating employment with the former entity. Fees will be debited from the firm's IARD Daily Account.

## EXAMINATION PROGRAM

Pursuant to A.R.S. § 44-3132 and in accordance with § 41-1009, the Securities Division conducts examinations of state-licensed investment advisers and of their offices both within Arizona and outside of the state.

### Are Advisers Notified In Advance Of Examinations?

If you or your firm are to be examined, Securities Division staff will arrive at your place of business unannounced. The staff does not, as a normal course of business, schedule appointments. Examinations may last a day or longer and, if the location also serves as a dealer main or branch office, the staff will examine the records of that entity as well.

## **What Should I Expect During An Examination?**

During an examination, staff will review your books and records to determine compliance with relevant laws and regulations and to detect any potential issues. As part of the examination process, staff may also interview individuals regarding the operations of the investment adviser.

## **What Records Are Reviewed?**

A.A.C. R14-6-201 identifies the record keeping requirements for Arizona licensed investment advisers. The Division will review these records during an examination.

## **Concluding An Examination**

After completion of the examination, Division staff will usually sit down with the adviser and discuss any problems and issues that may have been uncovered. This is also an opportunity for the adviser to ask any questions of staff. After the examiner leaves, if deficiencies or potential problems were discovered, a follow-up letter will be sent to the adviser. This letter will require an adviser to respond to the Division in writing stating how the deficiencies will be corrected. If no deficiencies or issues are noted during an examination, the examination will be closed.

## **What Happens If A Problem Is Discovered?**

The resolution of problems discovered during an examination will be contingent on the nature of the problems. In some instances, an issue may be corrected at the time of the examination and, in other cases, the Division may conduct a follow-up examination. As stated previously, an adviser will receive a letter from the Division in the event deficiencies or issues are noted during an examination. In a small number of cases where more severe violations have occurred, an adviser can be subject to administrative orders, fines, and civil/criminal penalties.



## **BOOKS AND RECORDS**

Each investment adviser licensed or required to be licensed under the Investment Management Act shall make, maintain, and preserve books and records in accordance with the requirements imposed under A.A.C. R14-6-201, which incorporates 17 CFR 275.204-2. In connection with an examination, the Division may review the required books and records of the adviser, including but not limited to:

- **FINANCIAL RECORDS**, including general and auxiliary ledgers, journals of cash receipts and disbursements, income statements and balance sheets with all supporting checkbooks, bank statements, canceled checks, and bills
- **CORRESPONDENCE**, including incoming and outgoing letters, memos, notes, facsimiles, and e-mails, whether in hard copy or electronic format
- **COMPLAINT FILE**, including written and oral complaints, and documents relating to all litigations and arbitrations
- **ADVERTISING FILE**, including mass mailings, pamphlets, seminars, newsletters, etc.
- **CLIENT FORMS**, including new account forms, powers of attorney, client agreements and contracts, trading authorizations, written evidence of discretionary authority, etc.
- **TRADING DOCUMENTS**, including trade confirmations, blotters of trading activity, and client statements
- **FORM ADV**, including current Part II and the firm's "Disclosure Brochure," if one is used
- **PERSONNEL RELATED RECORDS**, including a list of all employees with their positions, CRD numbers, business cards, and a list of all outside business activities
- **PERSONAL SECURITIES TRANSACTION RECORDS** for all investment adviser representatives
- **ANY LIST OR LOG** documenting contact with and disclosure to clients and/or prospects

## **SPECIAL ISSUES**

Advertising and Websites Arizona law imposes certain limitations on the manner and substance of advertising used by investment advisers and investment adviser representatives in Arizona. Please review A.R.S. § 44-3241, A.A.C. R14-6-106, and A.A.C. R14-6-208 for additional information. A violation of (or failure to comply with) these regulations may result in administrative penalties and denial, revocation or suspension of the adviser's license.

Custody of Client Funds and Securities Investment advisers have custody of client funds and securities when they have possession of client funds and securities or the authority to obtain possession of client funds and securities. Advisers who have custody are subject to additional reporting requirements under the Investment Management Act. See A.R.S. § 44-3159(A)(2), A.A.C. R14-4-101(3), and A.A.C. R14-4-206 for further information. Failure to comply with these requirements may result in administrative penalties and denial, revocation or suspension of the adviser's license.

Fiduciary Duty to Clients Investment advisers have an affirmative duty to act in good faith and make full and fair disclosure of all material information to their clients, as well as an affirmative obligation to employ reasonable care to avoid misleading their clients. Conduct that breaches this duty may be considered fraud or dishonest or unethical conduct under the Investment Management Act and may result in administrative penalties and denial, revocation or suspension of the adviser's license.

Solicitation In Arizona, an individual who solicits, offers, or negotiates for the sale of or sells investment advisory services is required to be licensed as an investment adviser representative unless otherwise exempt from licensure. See A.R.S. § 44-3101(6) and A.A.C. R14-6-211 for additional information. An investment adviser who knowingly retains an unlicensed investment adviser representative may be subject to administrative penalties and denial, revocation or suspension of the adviser's license.

## **FRAUDULENT PRACTICES**

### **A.R.S. § 44-3241. Fraud in provision of investment advisory services; liability; violation; classification**

A. It is a fraudulent practice and unlawful for a person, in connection with a transaction or transactions within or from this state involving the provision of investment advisory services, directly or indirectly, to do any of the following:

1. Employ any device, scheme or artifice to defraud.
2. Make any untrue statement of material fact, or fail to state any material fact necessary in order to make the statement made, in the light of the circumstances under which it was made, not misleading.
3. Misrepresent any professional qualifications with the intent that the client rely on the misrepresentation.
4. Engage in any transaction, practice or course of business that operates or would operate as a fraud or deceit.

B. A person who violates this section is liable to any person for all losses incurred by that person as a result of the violation, together with interest on losses incurred, court costs and reasonable attorney fees. A civil action under this section is barred unless it is brought within three years after the violation or within two years after discovery of the facts constituting the violation, whichever occurs first.

C. A person who violates this section is guilty of a class 4 felony.

## **GROUND FOR DENIAL, REVOCATION, OR SUSPENSION**

### **A.R.S. § 44-3201. Grounds for denial, revocation or suspension of license; administrative remedies**

A. After a hearing or notice and an opportunity for a hearing as provided in article 7 of this chapter, the commission may enter an order suspending for a period of not more than one year, denying or revoking the license of an

investment adviser or investment adviser representative if the commission finds that it is in the public interest and any one or a combination of the following:

1. The application for licensure of the investment adviser or investment adviser representative, any financial statement, document or other exhibit filed with an application or any supplement or amendment to an application is incomplete, inaccurate or misleading.
2. The investment adviser is insolvent or is in an unsound financial condition.
3. The investment adviser or investment adviser representative violates this chapter or any rule or order of the commission adopted or issued under this chapter.
4. The investment adviser or investment adviser representative fails to file with the commission any record, report, financial statement or other information required under this chapter or any rule or order of the commission adopted or issued under this chapter or refuses to permit an examination pursuant to section 44-3132.
5. The investment adviser knowingly retains an unlicensed investment adviser representative who is required to be licensed under this chapter.
6. The investment adviser permits any person to render investment advice in violation of this chapter.
7. The investment adviser representative is not employed by a licensed or federal covered adviser.
8. The investment adviser or investment adviser representative has been convicted within ten years preceding the date of filing an application for licensure as an investment adviser or investment adviser representative, or at any time after the date of filing an application, of a felony or misdemeanor involving a transaction in securities, of which fraud is an essential element or arising out of the

conduct of any business involving securities or any aspect of the securities business.

9. The investment adviser or investment adviser representative is permanently or temporarily enjoined by order, judgment or decree of an administrative tribunal or a court of competent jurisdiction from engaging in or continuing any conduct or practice involving a violation of any federal or state securities laws or a violation of any other regulatory licensing requirements.

10. The investment adviser or investment adviser representative is subject to an order of an administrative tribunal, an SRO or the SEC denying, revoking or suspending membership, licensure or registration as a broker or dealer in securities or as an investment adviser or investment adviser representative for at least six months.

11. The investment adviser or investment adviser representative has been found civilly or criminally liable, by any court of competent jurisdiction or other governmental authority in a civil or criminal action not subsequently reversed, suspended or vacated, for any fraudulent act or practice in connection with any aspect of the securities business.

12. The investment adviser fails to reasonably supervise its investment adviser representatives or employees to assure their compliance with this chapter.

13. The investment adviser or investment adviser representative engages in dishonest or unethical practices in the securities industry. *(See also A.A.C R14-6-203)*

14. The investment adviser or investment adviser representative engages in dishonest or unethical practices in business or financial matters.

B. In addition to denying, revoking or suspending the license, if the commission finds that an investment adviser or investment adviser representative has engaged in an act, practice or transaction described in subsection A, paragraph 6, 12 or 13, the commission may do one or more of the following:

1. Assess administrative penalties.
2. Order the investment adviser or investment adviser representative to cease and desist from engaging in the act, practice or transaction or doing any other act in furtherance of the act, practice or transaction.
3. Take appropriate affirmative action, as prescribed by the commission, to correct the conditions resulting from the act, practice or transaction, including a requirement to provide restitution.

C. If the investment adviser is a partnership, corporation, unincorporated association, limited liability company or trust, it is sufficient cause for denial of licensure if a member of the partnership, an officer or director of the corporation or unincorporated association, a manager of a limited liability company, a trustee or any other fiduciary of a trust or a person controlling, controlled by or under common control with the investment adviser has been found civilly or criminally liable, by any court of competent jurisdiction or other governmental authority in a civil or criminal action not subsequently reversed, suspended or vacated, for any act or omission that would be sufficient grounds for denying the licensure of an individual investment adviser.

## **DISHONEST AND UNETHICAL PRACTICES IN THE SECURITIES INDUSTRY**

### **A.A.C. R14-6-203. Dishonest and Unethical Practices**

"Dishonest and unethical practices," with respect to investment advisers and investment adviser representatives subject to A.R.S. § 44-3201(A)(13), shall include but not be limited to the following:

1. Refusing to allow or otherwise impeding the Commission from conducting an investigation or examination under the IM Act or any rule adopted thereunder.
2. Placing an order to purchase or sell a security for the account of a client without authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a 3rd party without first obtaining a written 3rd-party trading authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without first obtaining written discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of specified securities shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives, and character of the account.
6. Borrowing money or securities from a client or client's account unless the client has authorized the borrowing in writing and is a dealer, an affiliate, or relative of the investment adviser or investment adviser representative, or a financial institution or other entity engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment adviser or investment adviser representative is a financial institution or other entity engaged in the business of loaning funds or the client is an affiliate or relative of the investment adviser or investment adviser representative.
8. Misrepresenting to any client, or prospective client, the qualifications of the investment adviser, the investment adviser representative, or an employee, or misrepresenting the nature of the investment advisory services being offered or fees to be charged for such services, or omitting to state a material fact necessary to make the statements made regarding qualifications, services, or fees, in light of the circumstances under which they were made, not misleading.
9. Providing a report or recommendation to any client prepared by someone other than the investment adviser or investment adviser representative without disclosing that fact. This prohibition does not apply to a situation where the investment adviser or investment adviser representative uses published research reports or statistical analyses to render investment

advice or where the investment adviser or investment adviser representative orders such a report in the ordinary course of providing service.

10. Charging a client an investment advisory fee that is unreasonable in light of the type of services to be provided, the experience and expertise of the investment adviser or the investment adviser representative, and the sophistication and bargaining power of the client.

11. Failing to disclose to a client in writing before entering into or renewing an investment advisory agreement with that client, or before any investment advice is rendered, any material conflict of interest relating to the investment adviser, the investment adviser representative, or an employee that could reasonably be expected to impair the rendering of unbiased and objective advice including but not limited to:

- a. Compensation arrangements connected with investment advisory services to clients that are in addition to compensation from such clients for those services; and

- b. Charging a client an investment advisory fee for rendering investment advice without disclosing that compensation for executing securities transactions pursuant to such investment advice will be received by the investment adviser, the investment adviser representative, or an employee.

12. Guaranteeing a client that a gain, loss, or other outcome will be achieved as a result of the investment advice.

13. Disclosing the identity, affairs, or investments of a client to any 3rd party unless required by law to do so or consented to by the client.

14. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract except a contract for impersonal advisory services unless such contract is in writing and discloses all the material terms of the contract including but not limited to the services to be provided, the investment advisory fee or the formula for computing the fee, the amount or the manner of calculation of the amount of the prepaid fee to be returned in the event of contract



termination or nonperformance, and the grant of any discretionary power to the investment adviser.

15. With respect to any client initially retained after July 19, 1996, entering into, extending, modifying, or renewing any investment advisory contract without disclosing, in writing to the client, any affirmative answers to disciplinary questions numbered 11A and 11K in Part I of the Form ADV.

16. Entering into, extending, modifying, or renewing any investment advisory contract that allows the assignment of such contract by the investment adviser without the prior written consent of the client.

17. Committing any act that results in denial, revocation, or suspension by an agency of any state of a license or registration relating to securities, where such denial, revocation, or suspension arises out of any scheme, act, practice, or course of business that operates or would operate as fraud or deceit, or arises out of a violation of Article 13 of the Securities Act or the rules promulgated thereunder.

18. Failing to comply with any arbitration award issued in connection with doing business as an investment adviser or investment adviser representative or as a dealer or salesman as defined in A.R.S. Title 44, Chapter 12.

19. Requesting or requiring any person to waive compliance with any provision of the IM Act or the rules thereunder. Any such waiver shall be void.

**ARIZONA CORPORATION COMMISSION**

**Chairman Mike Gleason  
Commissioner Bill Mundell  
Commissioner Jeff Hatch-Miller  
Commissioner Kris Mayes  
Commissioner Gary Pierce**

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